REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

NEXT MOBILE, INC.,
Respondent.

CTA *EB* NO. 1583
(CTA Case No. 8670)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
OCT 23 2017 2:53p.m.

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D E C I S I O N

MANAHAN, J.:

This resolves the *Petition for Review* [1] filed by the Commissioner of Internal Revenue (CIR) on February 9, 2017 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended,[2] which seeks the reversal and setting aside of the August 10, 2016 *Decision* [3] and November 25, 2016 *Resolution* [4], enunciated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 8670, entitled "*Next Mobile, Inc. vs. Commissioner of Internal Revenue*".

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[1] *Rollo*, CTA EB No. 1583, pp. 5-21.
[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).
[3] *Rollo*, pp. 22-37.
[4] *Rollo*, pp. 38-43.

The dispositive portions of the assailed Decision and Resolution read:

Decision[5] dated August 10, 2016:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, the assessments covering income tax and value-added tax for calendar year 2008 in the total amount of Php68,678,397.39, inclusive of interest and compromise penalty, are hereby **CANCELLED** and **WITHDRAWN**."

Resolution[6] dated November 25, 2016:

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration (Re: Decision dated 07 September 2016) is hereby **DENIED** for lack of merit.

The Facts

Petitioner is the chief of the Bureau of Internal Revenue (BIR) with the power to issue notices of seizures. He may be served with orders and processes of the Court at the BIR Building, BIR Road, Quezon City.[7]

Respondent is a domestic corporation duly organized and existing under Philippine laws, with principal office address at Next Mobile Building, 2244 España Avenue, Sampaloc City. It is enfranchised under Republic Act (RA) Nos. 7301 and 7940 to construct, establish, operate, and maintain radio paging systems and communications services, and to install and operate corresponding radio transmitting and receiving stations and communication facilities in or outside the Philippines. It is also duly registered with the BIR to engage in the business of telecommunications, as shown in its Certificate of Registration.[8]

On July 22, 2009, petitioner issued Letter of Authority (LOA) No. 2007 00037750 for the examination of respondent's books of accounts for CY 2008 for all internal revenue taxes,

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[5] *Supra*, Note 3.
[6] *Supra*, Note 4.
[7] Docket, CTA Case No. 8670, Petition for Review, p. 7.
[8] *Id.*

and the First Request for Presentation of Records which was received by the respondent on the same day.[9]

On August 20, 2009, petitioner issued the Second Request for Presentation of Records, which was received by respondent on August 26, 2009.[10]

On September 15, 2009, respondent filed a transmittal letter with the BIR submitting documents in compliance with the First Request for Presentation of Records, which was received by the petitioner on even date.[11]

On February 3, 2010, petitioner issued a Revalidation Notice to Taxpayer and a Final Notice for the presentation of book of accounts, all of which were received by the respondent on March 15, 2010.[12]

On March 23, 2010, respondent filed a letter with the BIR stating that it had already submitted some of the documents as shown in its September 15, 2009 letter, and requesting an extension of the period to submit additional documents.[13]

On July 5, 2012, petitioner issued the 1st Notice for collection of deficiency income tax and VAT in the aggregate amount of Php68,678,397.40, which was received by the respondent on July 19, 2012.[14]

On July 24, 2012, respondent filed a letter with the BIR stating that it could not understand why the 1st Notice for collection was sent when it had not received the Notice of Informal Conference (NIC), the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN), hence, it requested for a meeting. Petitioner received the letter on July 25, 2012.[15]

On August 17, 2012, respondent filed a letter with the BIR formally requesting a reinvestigation and stating that it

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[9] *Rollo,* Decision, p. 23.
[10] *Id.* at 24.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.,* at 24.

will not consider petitioner's notice of collection as a final collection letter of the assessed taxes.[16]

On May 14, 2013, petitioner issued a Preliminary Collection Letter (PCL) which was received by the respondent on May 16, 2013.[17]

On May 24, 2013, respondent filed a letter with the BIR reiterating its request for reinvestigation, which was received by the petitioner on even date.[18]

On June 13, 2013, petitioner issued a Final Notice Before Seizure which was received by the respondent on June 25, 2013, advising the latter to settle the deficiency income tax and VAT assessments for CY 2008 in the total amount of Php68,678,397.39, inclusive of interest and compromise penalties, broken down as follows:[19]

Tax Type	Basic Tax due	Interest	Compromise	Total
Income Tax	Php40,384,898.40	Php22,390,922.30	Php50,000.00	Php62,825,820.70
VAT	3,642,235.44	2,185,341.25	25,000.00	5,852,576.69
Total				**Php68,678,397.39**

Thus, on July 5, 2013, within thirty (30) days after receipt of the Final Notice Before seizure, respondent filed a petition before the Court in Division,[20] which ruled subsequently in its favor stating that when it did not actually receive the assessment, the same cannot be considered final, executory, and demandable. Petitioner's right to collect thereon has no basis.[21]

Further, it ruled that given the failure of the respondent to receive a valid PAN or FAN and the fact that the three-year prescriptive period to assess has long ended, petitioner's right to issue any deficiency income tax and VAT assessment against the respondent for CY 2008 has already prescribed.[22]

Petitioner then moved for the reconsideration of said decision which was also denied by the Court in Division in its

[16] *Rollo,* Decision, p. 25.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 33.
[22] *Id.* at 36.

assailed resolution.[23] Thus, petitioner filed the instant petition after the Court *En Banc* acted favorably on its motion for extension to file said petition[24] and had been granted a final and non-extendible period of fifteen (15) days.[25]

Respondent then was ordered to comment on the instant petition which it filed on March 20, 2017.[26] The Court gave due course to the petition. Thus, it required both parties to submit their respective memoranda.[27]

Respondent filed its Memorandum[28] on May 26, 2017, while petitioner submitted its Memorandum[29] on June 2, 2017, which was admitted although submitted a day after the expiration of the period granted by the Court. Hence, the instant case was deemed submitted for decision.[30]

The Issue

The issues[31] to be resolved are the following:

1. Whether the Third Division of this Honorable Court erred in ruling that respondent was not validly served the assessments, neither was it informed of the bases for such assessments; and

2. Whether the Third Division of this Honorable Court erred in ruling that the right to issue an assessment against the respondent has already prescribed.

Arguments of Petitioner CIR[32]

Petitioner CIR argues that it validly served the copy of the PAN and FAN to the respondent, hence, the latter was notified as to the factual and legal bases of the assessments. Further, petitioner argues that the assessment notices were issued

[23] *Supra*, Note 4.
[24] *Rollo*, Motion for Extension of Time to file Petition for Review, pp. 1-3.
[25] *Rollo*, Minute Resolution dated January 25, 2017, p. 4.
[26] *Rollo*, Comment, pp. 47-61.
[27] *Rollo*, Resolution dated April 11, 2017, pp. 63-64.
[28] *Rollo*, pp. 65-80.
[29] *Rollo*, pp. 81-92.
[30] *Rollo*, Resolution dated June 27, 2017 pp. 94-95.
[31] Rollo, Petition for Review, pp. 8-9.
[32] *Supra*., Note 30.

within the prescriptive period, thus, the assessments became final and demandable.

Arguments of Respondent Next Mobile[33]

On the other hand, respondent argues that the prescription period was not interrupted because it did not receive the PAN and FAN and because of such fact, the assessment did not become final, executory and demandable. Respondent further argues that regardless of whether the PAN or FAN was received or not, petitioner issued the FAN less than fifteen (15) days from the date the PAN was allegedly sent by registered mail.

Ruling of the Court *En Banc*

The Court observes that the errors assigned in the present Petition for Review are mere rehash of the earlier arguments of the petitioner and the same had already been adequately discussed and substantially resolved by the CTA Third Division in its August 10, 2016 *Decision*[34] and November 25, 2016 *Resolution*[35]. But just to highlight the *ratio decidendi* of the assailed earlier Court rulings, the subsequent disquisition is set forth below.

Petitioner failed to prove that respondent actually received the assessment notices

Petitioner argues that the copies of PAN dated January 5, 2012 with accompanying Details of Discrepancies were served through registered mail to the respondent's business address on January 10, 2012. Petitioner further argues that the Formal Letter of Demand (FLD) dated January 24, 2012 with accompanying Details of Discrepancies and Assessment Notice Nos. 32-08-IT-3227 and 32-08-VT-3227, both dated January 24, 2012, were also served through registered mail on the same day. Thus, he insists that there was a constructive service of said notices.

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[33] *Rollo*, Comment of Respondent, pp. 100-113.
[34] *Supra*, Note 3.
[35] *Supra*, Note 4.

Respondent counters, on the other hand, that it never received those abovementioned documents and no proof was adduced that such were indeed actually received by it, hence, the Court in Division has correctly ruled that the lack of proof of service leads to the conclusion that no assessment was issued against it.

It is true that when a letter was duly directed and mailed, it is presumed that it was received in the regular course of the mail.[36] However, when the party who is supposed to receive said letter denies that it actually received such, that presumption is destroyed. Thus, the burden to prove otherwise is shifted back to the one who claims that it directed and mailed said letter and he must show through valid evidence that indeed there was an actual receipt made by the intended person.

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[37] it was ruled by the Supreme Court that although there is a presumption of constructive service, the Court is not precluded to determine whether said notices were indeed received by the respondent, *viz*:

> Under Section 203 of the National Internal Revenue Code (NIRC), respondent had three (3) years from the last day for the filing of the return to send an assessment notice to petitioner. In the case of *Collector of Internal Revenue v. Bautista*, this Court held **that an assessment is made within the prescriptive period if notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period**. Receipt thereof by the taxpayer within the prescriptive period is not necessary. **At this point, it should be clarified that the rule does not dispense with the requirement that the taxpayer should actually receive**, even beyond the prescriptive period, **the assessment notice which was timely released, mailed and sent**.
>
> In the present case, records show that petitioner filed its Annual Income Tax Return for taxable year 1987 on 14 April 1988. The last day for filing by petitioner of its return was on 15 April 1988, thus, giving respondent until 15 April 1991 within which to send an assessment notice. While respondent avers that it sent the assessment notice dated 1 February 1991 on 6 February 1991, within the three (3)-year period prescribed by law, petitioner denies having received

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[36] Section 3(v), Rule 131 of the Rules of Court.
[37] G.R. No. 157064, August 07, 2006.

> an assessment notice from respondent. Petitioner alleges that it came to know of the deficiency tax assessment only on 17 March 1992 when it was served with the Warrant of Distraint and Levy.
>
> In *Protector's Services, Inc. v. Court of Appeals,* this Court ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed. **While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee**. (*Emphases supplied*)

In *Commissioner of Internal Revenue v. GJM Philippines Manufacturing, Inc.,*[38] which was also cited in the assailed decision, the Supreme Court ruled that:

> **To prove the fact of mailing, it is essential to present the registry receipt** issued by the Bureau of Posts or the **Registry return card which would have been signed by the taxpayer or its authorized representative**. **And if said documents could not be located, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention**. <u>The Court does not put much credence to the self-serving documentations made by the BIR personnel, especially if they are unsupported by substantial evidence establishing the fact of mailing.</u> While it is true that an assessment is made when the notice is sent within the prescribed period, the release, mailing, or sending of the same must still be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice or control, and without adequate supporting evidence cannot suffice. Otherwise, the defenseless taxpayer would be unreasonably placed at the mercy of the revenue offices. (*Emphasis and underscoring supplied*)

In the instant case, the subject notices were allegedly mailed by the petitioner through registered mail but their actual receipt was expressly and repeatedly denied by the respondent. Hence, to prove the fact of mailing, petitioner should have shown the acknowledgement by the authorized

[38] G.R. No. 202695, February 29, 2016.

official of the respondent as indicated in the Return Card accompanying the registered mail.

However, even during the trial in the Court in Division, as properly pointed out in the assailed decision, petitioner's witness even admitted that he had not received any registry return card for the PAN, FAN, or FLD, and no other proof was adduced to show that respondent actually received said notices. Neither was a registry receipt nor a Certification from the Bureau of Posts offered in evidence.[39]

Notably, the attention of the Court was caught by the mixed mode of service adopted by the petitioner. In between the service of the NIC, PAN and FAN which was done through registered mail, the service of the LOA, First, Second and final Request for Presentation of Records was made personally,[40] on the one hand, and the service of the 1st Notice of Collection of deficiency income tax and VAT, PCL and the Final Notice before Seizure, was likewise done personally at the business address of the respondent.[41]

It was during the period within which the assessment notices should have been personally served also that the petitioner claimed that respondent had abandoned its office address. The only proof that it proffered to buttress its claim was a barangay certification that the respondent did not secure its barangay clearance for a certain period.[42] Yet after that critical phase of the prescriptive period to assess, petitioner was able to personally serve again his collection letters to respondent's business address.

Thus, petitioner failed to prove that it validly served the assessment notice to respondent.

Petitioner's right to issue an assessment has already prescribed.

Petitioner insists that respondent had received or is deemed to have received copies of the PAN and FAN. He argues that said notices contain the complete details, such as

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[39] *Rollo*, Decision, pp. 30-32.
[40] Docket, CTA Case No. 8670, Joint Stipulation of Facts and Issues, p. 1020.
[41] *Rollo.*, Memorandum, p. 66.
[42] *Rollo.*, Petitioner's Memorandum, pp. 86-87.

computations, schedules, and applicable laws, thus, it is clear that respondent was duly informed of the law and the facts upon which the assessment was made which complies with the requisites of Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, and made the issuance of said assessment notices within the prescribed period under Section 203 of NIRC, as amended. Hence, the subject assessment became final and demandable.

As discussed in the above *Barcelon* case, an assessment may be presumed to have been made within the prescriptive period "if the notice to this effect is released, mailed or sent by the CIR to the taxpayer within said period" and the receipt of such by the taxpayer is not necessary.

Such presumption is qualified by the required mailing of the assessment within the prescriptive period. Thus, when petitioner adduced evidence of mailing such assessment, a *prima facie* basis of such presumption exists.

However, in the same decision, the Supreme Court did not discount the fact of the actual receipt by the taxpayer of said assessment. Thus, when a taxpayer who is supposed to receive the said assessment directly contravenes or denies the receipt thereof, the *prima facie* basis of such presumption is broken and the burden to prove that the taxpayer indeed actually received the assessment is shifted on the part of the one who alleged of its mailing.

In *Fe J. Bautista et al. v. Hon. Malcolm G. Sarmiento,*[43] the Supreme Court explains the concept of burden of such evidence, to wit:

> When a prima facie case is established by the prosecution in a criminal case, as in the case at bar, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed—the prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial. **This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.** (*Emphasis supplied*)

[43] G.R. No. L-45137 September 23, 1985.

In the instant case, petitioner failed to counter the denial made by the respondent by not adducing any evidence that indeed the latter actually received the subject assessment.

Thus, in the absence of proof evidencing receipt of the PAN, FAN, or FLD by the respondent, no valid assessment was made within the prescriptive period. The constructive receipt alleged by petitioner fails miserably.

The Court in Division is, therefore, correct in ruling that the assessment against the respondent for CY 2008 has already prescribed and that the Final Notice Before seizure was void and cannot be considered final, executory, and demandable because there can be no valid collection of taxes when there is no final assessment.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The August 10, 2016 *Decision*[44] and November 25, 2016 *Resolution*[45], of the CTA Third Division in CTA Case No. 8670, are hereby **AFFIRMED**.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

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[44] *Supra*, Note 3.
[45] *Supra*, Note 4.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice